



KUDREMUKH

General Conditions of Contract for Consultancy Services

First Edition

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KIOCL Limited

(A Govt. of India Enterprise)

REGISTERED AND CORPORATE OFFICE

II BLOCK, KORAMANGALA, BANGALORE – 560 034



FOREWORD

The General Conditions of Contract for Consultancy Services are prepared and developed by Technical Services Dept, KIOCL Limited, II Block, Koramangala, Bangalore- 560 034 in co-ordination with the other user departments in the organization.

These Conditions of Contract for Consultancy Services (first edition) are recommended for general use of consultants for the purpose of providing professional consulting services. They have been developed to apply to a wide range of consulting services of major & minor projects.

The General Conditions of Contract for Consultancy services are intended to be amplified or adapted as required to suit particular be amplified or adapted as required to suit particular engagements and may be augmented incorporating the Special Conditions of Contract.

The document is free to download from www.kioclltd.in - General Conditions of Contracts for **Consultancy Services** as a pdf document.



GENERAL CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES

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GENERAL CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES

1.0 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Client`s Representative:

The person named as the Client`s Representative/Authorized person as mentioned in the Agreement/LOI/Work order to operate the tender.

“Applicable Law” means all laws in force and including amendment if any, & effect as on date hereof and which may be promulgated or brought into force and effect thereafter in India, including rules and regulations made therein, as may be in force and effect during subsistence of this agreement/work orders.

“Contract” means the Work order / Agreement, the Letter of Acceptance, the Letter of Intent, the conditions, the specifications, the drawings, the schedules and further documents (if any) which are listed in the Agreement or in the Letter of Acceptance or in the work order.

“Client” means the KIOCL Limited which expression shall also include its legal successors and permitted assigns.

“Consultant” means the person or group named in the Contract who has to perform the Services and which expression shall include his/their legal successors and permitted assigns

“GCC” mean the General Conditions of Contract.

“Government” means the Government of India.

“Party” means the client or the Consultant as the case may be and “Parties” means all of these entities.

“Period of Consultancy Services” shall mean the time between the Date of Commencement and end of Period of Completion as given in Agreement /work order.

“SCC” means the Special Conditions of Contract by which these General Conditions of Contract (GCC) may be amended or supplemented with respect to the particular service.

- i. **“Day”** means a calendar day
- ii. **“Month”** means a calendar month
- iii **“Year”** means 365 days



“Terms and expressions not herein defined” shall have the meanings assigned to them in the “Indian General Clauses Act, 1897”, or the “Indian Contract Act” or the Indian Sale of Goods Act or any other applicable Indian Law, as the case may be.

Third Party” means any person or entity other than the Government, the Client / the Consultant.

Confidential Information

Any professional advice or other information of a sensitive nature, whether or not specifically identified as confidential and any information about the Parties, or their businesses, or their Clients gained during the currency of the Agreement that is not already in the public domain.

Services

The main scope of consultancy services shall be described in work order / agreement or, in Special Conditions of contract.

Amendments

A change in scope of work, time of completion of job or such services and other technical or commercial terms.

Working Day

A calendar day other than a Sunday, Statutory or Public holiday.

1.2 Interpretation

In the Contract except where the context requires otherwise

- a) words indicating one gender include all genders,
- b) words indicating the singular also include the plural and words indicating the plural also include the singular, and
- c) “written” or “in writing” means hand-written, type written, printed or electronically made and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration for the interpretation of these conditions.

1.3 Law Governing Contract

This contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.



1.4 Joint and Several Liabilities

If the Consultant is (Under Applicable Law) a Joint Venture, Consortium or other Incorporated Group of two or more Members:

- a. These Members shall be deemed to be jointly and severally liable to the Client for the performance of the Contract.
- b. These Members shall notify the Client of their Lead Member who shall have authority to bind the Consultant and each of these members / persons; and
- c. The Consultant shall not alter its nature of association / composition or legal status without the prior written consent of Client.

1.5 Communication and Language of Contract

1.5.1 Communication to be in writing

Communications between Parties will be effective only when in writing. Verbal communication, if any, must be confirmed in writing immediately later on. Any notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, email or facsimile to such Party at the address specified in the invitation to bids. Notices shall be deemed to be effective as follows:

- a. In case of personal delivery or registered mail, on delivery
and
- b. In case of emails & facsimiles, 24 hours following confirmed transmission.

1.5.2 Language of Contract

The Contract would be executed in English which shall be controlling language for all matters relating to meaning or interpretation of this Contract.

1.6 Commencement, Completion and Modification of Contract

1.6.1 Effectiveness of Contract

The Contract shall come into force and effect on the date (the "Effective Date") of issue of Letter of Intent/ Work Order unless otherwise specified, if any, listed in the order / SCC.

1.6.2 Completion of Services

The targeted date of completion and date of commencement shall be as specified in SCC / as given in the work order/agreement.

1.7 Suspension

The client may, by written notice of suspension to the Consultants, suspend all or part of services and payments to Consultants there under if the Consultants fail to perform any of the obligations under the Contract, including carrying out of the Services, provided that such notice of suspension shall a) specify the nature of failure and b) request the consultants to remedy such failure within a period not exceeding thirty (30) days.



2.0 OBLIGATIONS OF THE CONSULTANT

2.1 The Services

The Consultant must:

- Provide the Services as per the agreement /work order in compliance with terms & conditions of the contract and as per the Special conditions of contract of the order.
- Perform the Services in accordance with the time schedule as specified in the agreement / work order.
- Advise the Client/its representative promptly if additional briefing or information is required from the Client to avoid any delay to the provision of Services or Works.

2.2 Conflicts of Interest – Between Client and Consultant.

The Consultant must try to ensure that conflicts of interest do not arise, and notify the Client immediately in writing if it is thought that a conflict of interest may arise or has arisen.

Where a conflict of interest is identified and the Client has given informed consent, the Consultant must establish structures and practices which:

- ensure that the conflict is avoided in practice; or
- if avoidance is not practicable, ensure that the effects of conflict are minimised.

In either situation, the Consultant must inform the Client of the actual practices that have been reputable.

2.3 Public Statements

The Consultant shall not make any public or media statements to anyone about this Agreement, the Services or the Works under taken by consultant without the Client's written approval.

2.4 Delay

If at any time the Consultant's performance falls behind the schedule / programme set out (as amended from time to time in accordance with the Agreement/work order), then the Consultant shall notify the Client and, where due to matters within the control of the Consultant, shall take all practicable steps to remedy such delay.

2.5 Subletting or transfer of agreement

Consultant shall not sublet, assign or otherwise transfer his rights or obligation under contract or any part of the same to any party without the previous written consent of the Client except for the items already identified.



2.6 Indemnity

2.6.1 The Consultant assumes the responsibility for and shall indemnify and save harmless the Client from all liability, claims, cost, expenses, taxes and assessments including penalties, punitive damages, attorney's fee and court cost which are, or may be required with respect to any breach of the Consultant's obligations under the Contract, or for which the Consultant has assumed responsibility under the Contract, including those imposed under any contract, local or national law or laws, or in respect of all salaries, wages or other compensation of all persons employed by the Consultant in connection with performance of any work covered by the Contract and vice versa. The Consultant shall execute and deliver such other further instruments and to comply with all the requirements of such laws and regulations as may be necessary there under to confirm and effectuate the Contract and to protect the Client and vice versa.

2.6.2 The Client shall not be in any way held responsible for any accident or damages incurred or claims arising from during discharge of the obligations by Consultant under this Contract and vice versa.

3.0 OBLIGATIONS OF THE CLIENT

3.1 Payment

On completion of the contracted milestones of the services successfully and satisfactorily performed by the consultant under this contract, the client shall make the payment of consultant fees as per the payment terms & conditions of the work order / Agreement.

3.2 Provision of Information to the Consultant

The Client must:

- provide, free of charge the information to the best of his knowledge
- in response to the Consultant's request, provide additional relevant information, within a timeframe that does not materially delay the Services or the Works;
- accept responsibility for the accuracy of information provided. The Consultant is expected to review all the information provided to ensure that it contains no manifest errors or omissions. No Variation will exist if the information contains manifest errors or omissions that the Consultant should reasonably have been expected to find.

3.3 Client Decisions

The Client must respond to any written request from the Consultant for a decision (contractually obliged to be taken by the client) within a reasonable time, to avoid or minimise any delay to the provision of the Services or Works.



If the Services are to be provided in stages, then the Client must approve the current stage before the Consultant may proceed with the next stage. If the Client has any concerns with the current stage, the Client shall notify the Consultant of these in writing prior to giving approval for the Consultant to proceed to the next stage.

3.4 Assistance to the Consultant

The Client shall co-operate with the Consultant and not to obstruct the performance of the Services.

The Client shall, as far as practicable:

- provide free of charge the personnel, equipment and other facilities under his obligation as per the terms of the contract.
- allow the Consultant to visit the site and other locations associated with the services as per the terms of contract.
- Timely obtain and pay for all consents, certificates, approvals, authorities, licences and permits that are needed to lawfully carry out the Works, except where they are to be obtained by the Consultant.

4.0 PERSONNEL

4.1 Client's Representative

The Client's Representative has authority to give the Consultant instructions on the Client's behalf; and may monitor, review, approve, accept, reject or confirm any part, or all, of the Services.

If the Client changes the Client's Representative, the Client shall inform the same to the Consultant in writing.

4.2 Consultant's Representative

The Consultant's authorized representative has authority to receive instructions on behalf of the Consultant and for co-ordinating and providing the Services as agreed on a day-to-day basis, and must communicate with the Client's Representative as and when required.

5.0 LIABILITY AND INSURANCE

5.1 Consultant's Liability

Where the Consultant breaches the Agreement/work order, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities (including any liability of the Client to a third party), losses or expenses caused directly by the breach.



5.2 Contributory Conduct

If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution.

5.3 Duration of Liability

Neither party shall be liable for any loss or damage occurring after the Defect Liability Period or, as stated in the Special Conditions of the Contract.

6.0 AMENDMENTS

6.1 Amendments to the Services

The Client may issue amendment to the Services, in writing, or may ask the Consultant to propose a Variation to the Services, the impact of which on the cost, programme and completion date for the Services shall be agreed upon mutually between the parties.

7.0 CONFIDENTIALITY

7.1 Client Obligations

The Client must:

- identify Confidential Information at the time it is supplied to the Consultant;
- keep all Confidential Information relating to the Consultant confidential and only use it for the purposes it was made available for;

7.2 Consultant Obligations

The Consultant must:

- identify Confidential Information at the time it is supplied to the Client;
- keep all Confidential Information relating to the Client or, provided by the Client or the Client's project confidential and only use it for the purposes it was made available; and
- not disclose any Confidential Information relating to the Client or the Client's project or the Works without the Client's written approval, unless it is necessary for the purposes of the Services or Works to disclose it to any appropriate third party, or as required by law.
- Consultant shall not prepare articles or take photographs for publication or make speeches about the work and /or plant(s) and installation without prior written consent of Client.



7.3 Exclusions

Information shall cease to be Confidential Information when the information is publicly available through no unauthorized act of either Party.

If either Party is legally bound to disclose Confidential Information, that Party must first advise the other Party what information will be provided and limit the information to that required by the law.

8.0 JURISDICTION OF COURT

The Courts at Bangalore will have jurisdiction on any dispute arising out of this NIT.

8.1 The further progress of any work under the Contract shall continue, unless otherwise found technically in-feasible, during the dispute settlement mechanism proceedings and no payment due to the Consultant or payable by the Client shall be withheld on account of pendency such proceedings.

8.2 Recovery of Sums Due

If under this Contract any sum of money is recoverable from and payable by the Consultant and the Client has preferred any claim against the Consultant, the Client shall be entitled to recover and/or to retain such sum by appropriating, in part or whole, as the case may be shall be deducted, retained from any sum then due on which at any time thereafter may become due to the Consultant under this or any other Contract with the Client. In the event of such sums being insufficient, then the balance or the total sum recoverable the Consultant shall pay the Client, on demand, the remaining balance due.

9.0 TERMINATION

The Client may, by a written notice of termination not less than thirty (30) days to the Consultants after occurrence of any of the following events specified in paragraphs (a) through (f) of terminate the Contract.

- a) If the Consultants fail to remedy a failure in the performance of their obligations hereunder, as specified in Clause GCC 1.7 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as Client may have subsequently approved in writing.
- b) If the Consultants become (or, if Consultants consist of more than one entity, if any of their Members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for benefit of debtors or go into liquidation or receivership whether compulsory or voluntary or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction or otherwise is guilty of breach of Agreement;



- c) If the Consultants submit to Client a statement , which has a material effect on the rights, obligations or interests of the Client and which the Consultants are aware to be false;
- d) If as result of force majeure, the Consultants are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- e) If the Consultant, in the judgment of Client has engaged in corrupt or fraudulent practices in competing for or in executing the Contract
- f) Under exceptional circumstances, the Client is free to terminate the contract either in whole or portion thereof, in such cases, Client will compensate for the services carried out till the date of cancellation as per mutually agreed terms of the contract.

For the purpose of this clause:

1. "Corrupt practice" means the offering, receiving or soliciting anything of value to influence the action of a public official during the process of contract finalization or contract execution.
2. "Fraudulent practice" means any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial benefit or to avoid an obligation.

10.0 GENERAL PROVISIONS

10.1 Law and Currency

This Agreement is subject to Indian law. References to Rupees are references to Indian Rupees unless otherwise stated.

10.2 Events beyond Control

Should any event occur which:

- is beyond the control of either Party; and
- is neither directly nor indirectly caused by either Party; and
- prevents the performance of the Services (in whole or in part) required under this Agreement,

then those Services will be suspended until such time that it becomes practicable to recommence the Services. This does not include events personal to either Party, such as ill-health or lack of funding or resources.

In the event that there is a reasonable likelihood that the Services are not able to be recommenced, then this Agreement may be terminated by the Client.



In circumstances where the Services or part of the Services have to be suspended or delayed, the Consultant will be allowed extra time to complete the Services and such extra time should be reasonable in the circumstances.

10.3 Reporting

The Client and the Consultant shall review and discuss the progress of the Services, as agreed from time to time, or as reasonably requested.

11. FORCE MAJEURE

- 11.1** Any delay, in or failure of performance of the CONTRACT by CONSULTANT or CLIENT shall not constitute defaults by such party or give rise to any claim for damages against it, if and to the extent such delay or failure of performance is caused by acts of God, acts of war or hostilities, acts or omissions of Government, invasion, revolution, civil commotion, blockade, embargo, sabotage, fires, severe earth quakes, typhoons, cyclones, lightning, plague, epidemic or other act, omission or circumstances, (excluding monsoon) which are beyond the reasonable control of the parties affected which they could not have reasonably foreseen and guarded against and which by exercise of reasonable care and diligence, they are unable to prevent (hereinafter referred to as Force Majeure). CLIENT shall be the sole judge to decide whether or not an event is Force Majeure and decision is final and binding. Monsoon season is not considered a FORCE MAJEURE event.
- 11.2** The party affected by the occurrence of the event of Force Majeure shall promptly notify within 10 days of such occurrence to the other part hereto at its commencement and termination along with the copies of any documents, if any, showing the existing or termination of such event and its effect on the WORK. Delay occasioned by Force Majeure shall give rise to an extension of the time for performance of either party obligations under this CONTRACT commensurate with such delay.
- 11.3** Should CONSULTANT or CLIENT be prevented from fulfilling his obligations as provided for under this CONTRACT by the existence of a cause of Force Majeure lasting continuously for a period of forty five (45) days, the party which is so prevented shall prior to the termination of the Force Majeure condition and after the expiry of the said period of forty five (45) days have the option to terminate this CONTRACT without further liability to either party, except that CONSULTANT shall be paid for the work performed upto the date of such termination.

12.0 LIQUIDATED DAMAGES / PENALTIES FOR DELAYS AND DEFICIENCIES OF SERVICES.

Time is the essence of the contract, it shall be the bounden duty of the consultants to strictly adhere to time for performance of various services indicated in the contract. Delays and deficiencies on part of consultants shall attract penal provisions.



- (a) In case of delays without valid reason, the consultants shall be liable to pay liquidated damages at one-half of one percent (0.5%) per week of the contract price subject to a maximum of ten percent (10%) of contract price.
- (b) Additionally, for deficiencies in services a fine up to a total five (5%) of contract value may be imposed.

13.0 EXTENSION OF TIME

- 13.1** If CONSULTANT believes that the work is being delayed owing to the failure of CLIENT to keep a commitment, he shall immediately notify CLIENT in writing, if CLIENT is satisfied that the reasons stated by CONSULTANT have a bearing on the time schedule and that such delay cannot be made up by CONSULTANT by rearranging the sequence of job, a change in method, or in any other way, then CLIENT shall extend, the said specified required completion time for a period of time equivalent to any such delay on receipt of request from the CONSULTANT along with full justification. The decisions of CLIENT in this regard shall be final and binding on the consultant.
- 13.2** The Consultant shall not delay / discontinue the job for want of grant of extension of time.

14.0 ESCALATION

No escalation will be admissible on fee on any account unless otherwise specifically brought out in the agreement / work order.

15.0 FRAUD PREVENTION POLICY

Every one may take note that a "Fraud Prevention Policy" is being followed by KIOCL, which provides a system for prevention/detection/reporting of any fraud. It also forbids everyone from involvement in any fraudulent activity and that where any fraudulent activity is suspected by anyone, the matter must be reported to the 'Nodal Officer' (Chief Vigilance Officer) as soon as he / she comes to know of any fraud or suspected fraud.

16.0 INTEGRITY PACT

- 16.1** The Bidder must accept the "Integrity pact" as per the pro-forma, enclosed with the Bid document and shall submit the same duly signed on all pages along with the Part-I of the bid.

The procedure for submission of Integrity Pact is as under:

- The Bidder shall submit the Integrity Pact on his Company's letter head duly signed by the authorised representative on all pages.



- All the pages of the Integrity Pact shall be signed by both KIOCL LTD. as well as the Bidder.
- The Bidder shall not change the content of the Integrity Pact.
- KIOCL's authorized signatory will sign the Integrity Pact after opening of the Bid.

16.2 Independent External Monitors (IEMs) have been appointed by KIOCL Limited for implementation of Integrity Pact Programme (IPP). Details of IEM's are available in the NIT.

17.0 INTEGRITY PACT (IP) Format:

THIS AGREEMENT is entered into between the following Parties:

KIOCL Limited, II Block, Koramangala, Bangalore 560 034 hereinafter referred to as **"The Principal"**,

and

Name & Address of the Party

.....

Herein after referred to as **"The Tenderer/ Consultant"**

Preamble

The Principal intends to award a contract, following its laid-down organizational procedures,.....

.....The Principal values full compliance with all relevant laws and regulations and the principles of economical use of resources and of fairness and transparency in its relations with its Tenderer(s) and /or Consultant(s).

In order to achieve these goals, the Principal cooperates with the renowned international Non-Governmental Organization, "Transparency International" (TI). Following TI's national and international experience, the Principal will appoint an Independent External Monitor (IEM) who will monitor the tender process and the execution of the Contract for compliance with the principles mentioned below.



IT IS AGREED AS FOLLOWS:

Definitions:

- a) **"Principal"** means KIOCL Limited, incorporated under the Companies Act 1956, having their registered office at II Block, Koramangala, Bangalore – 560 034 and includes their successors.
- b) **"Tenderer"** means the person, firm or company submitting a tender against the Invitation to Tender and includes his/ its/ their staff, consultants, parent and associate and subsidiary companies, agents, consortium and joint venture partners, sub-consultants and suppliers, heirs, executors, administrators, representatives, successors.
- c) **"Consultant"** means the Tenderer whose tender has been accepted by the principal or Company whose tender has been accepted and shall be deemed to include his/ its/ their successors, representatives, heirs, executors and administrators unless excluded by the Contract.
- d) **"Independent External Monitor"** means a person, hereinafter referred to as IEM, appointed, in accordance with **clause 8.a** below, to verify compliance with this agreement.
- e) **"Party"** means a signatory to this agreement.
- f) **"Contract"** means the contract entered into between the Principal and Tenderer/Consultant for the execution of work mentioned in the preamble above.

Commitments of the Parties

Section 1 - Commitments of the Principal

The Principal commits itself to take all measures necessary to prevent corruption (inducement to violate duty assigned to its employees) and to observe the following principles;

- i) No employee of the Principal, personally or through family members or any third person, will in connection with all stages of tendering or the execution of Contract, demand or take a promise, or accept, for him/herself or any third person, any material or non-material benefit which he/she is not legally entitled to;
- ii) The Principal will, during the tender process, treat all Tenderers with equity and reason. The Principal will in particular, before and during the tender process, provide to all Tenderers the same information and will not provide to any Tenderer any information/ clarification through which the Tenderer could obtain an advantage in relation to the tender process or the Contract execution;
- iii) The Principal will not take, directly or indirectly, any steps, which could unduly influence the functioning of IEM.



- iv) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the relevant Anti-corruption Laws of India/ guidelines of Govt. / guidelines of CVC/ guidelines of Principal, or if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can initiate disciplinary actions.
- v) If the Principal obtains information of conduct of a bidder, consultant or sub-consultant or of an employee or a representative or an associate of a bidder, consultant or sub-consultant, which constitutes corruption, or if the Principal has a substantive suspicion in this regard, the Principal will inform the Vigilance Department of the principal.

Section 2 - Commitments of the Tenderer(s)/Consultant(s)

- 2.1 The Tenderer /Consultant commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the Contract execution;
 - i) The Tenderer / Consultant will not directly or through any other person(s) or firm, offer, promise or give to the Principal, or to any of the Principal's employees involved in the tender process or the execution of the Contract or to any third person any material or immaterial benefit which he / she is not legally entitled to in order to obtain, in exchange, an advantage during the tender process or to vitiate the Principal's tender process or the execution of the Contract.
 - ii) The Tenderer / Consultant will not enter with other Tenderers into any illegal agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or actions to restrict competitiveness or to vitiate the Principal's tender process or the execution of the Contract.
 - iii) The Tenderer / Consultant will not commit any criminal offence under the relevant Anti-corruption Laws of India; further, the Tenderer / Consultant will not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
 - iv) The Tenderer / Consultant of foreign origin shall disclose the name and address of the agents/representatives in India, if any. Similarly, the Tenderer / Consultant of Indian Nationality shall furnish the name and address of the foreign principals, if any.
 - v) The Tenderer / Consultant will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the Contract.
 - vi) The Tenderer/ Consultant will not take, directly or indirectly, any steps, which could unduly influence the functioning of IEM.



- vii) The Tenderer / Consultant will not instigate third persons to commit offences outlined above or be an accessory to such offences.

2.2 Obligation to Ensure Compliance

- a). Each Party will take all reasonable steps to ensure that the provisions of this agreement which are binding on it are complied with by all of its staff, consultants, parent and associated and subsidiary companies, agents, consortium and joint venture partners, sub-consultants and suppliers.
- b). Each Party will appoint an appropriate senior manager with responsibility for ensuring that the provisions of this agreement are complied with.

Section 3 - Disqualification from tender process and exclusion from future contracts

- a). If the Tenderer, before award of Contract, has committed a transgression through violation of any of the terms **under section 2 above** or in any other form such as to put his reliability or credibility as Tenderer into question, the Principal is entitled to disqualify the Tenderer from the tender process or to terminate the Contract, if already signed, for such reason.
- b). If the Tenderer / Consultant has committed a transgression through a violation of any of the terms **under section 2 above** or in any other form such as to put his reliability or credibility into question, the Principal is entitled also to exclude the Tenderer / Consultant from future Contract award processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, in particular the number of transgressions, the position of the transgressors within the company hierarchy of the Tenderer / Consultant and the amount of the damage. The exclusion will be imposed for a minimum of six (6) months and a maximum of three (3) years.
- c). If the Tenderer / Consultant can prove that he has restored/ recouped the damage caused by him and has installed a suitable corruption prevention system, the Principal may revoke the exclusion before the expiry of the period of such exclusion.
- d). A transgression is considered to have occurred if, in light of all available evidence, a reasonable doubt is possible.

Section 4 - Compensation for Damages

- a). If the Principal has disqualified the Tenderer from the tender process prior to the award according to **Section 3 above**, the Earnest Money Deposit (EMD) furnished, if any, along with the offer as per the terms of the Invitation to Tender (ITT) shall be forfeited. This is apart from the disqualification of the Tenderer as may be imposed by the Principal as brought out at section **3 above**.



- b). If the Principal has terminated the Contract according to **Section 3 above**, or if the Principal is entitled to terminate the Contract according to **section 3 above**, the EMD/Security Deposit furnished by the consultant, if any, as per the terms of the ITT/Contract shall be forfeited. This is apart from the disqualification of the Tenderer, as may be imposed by the Principal, as brought out at **section 3 above**.

Section 5 - Previous Transgression

- a) The Tenderer hereby declares that no previous transgressions with respect to provisions of Integrity pact occurred in the last three (3) years with any other Company in any country or with any other Public Sector Enterprise in India and, as such, there is no case for his exclusion from the tender process.
- b) The Tenderer hereby agrees that if he has made/makes incorrect statement in regard to this aspect, he can be disqualified from the tender process or the Contract, if already awarded, can be terminated for that reason.

Section 6 - Equal treatment of all Tenderers/Consultants/ Sub - consultants / Consultants

- a) The Tenderer / Consultant undertakes to obtain from all sub-consultants a commitment consistent with this integrity pact, and to submit it to the Principal at the time of seeking approval of the principal for appointment of sub-consultants.
- b) The principal will enter into agreements with identical conditions as that of this Integrity Pact, with all Tenderers / Consultants
- c) It is essential for all tenderes / consultants to sign the Integrity Pact with the company if the value of the transaction is more than 30 lakhs. The principal will disqualify from the tender process all tenderers/ consultants who do not sign this Pact or violate its provisions.

Section 7 - Breaches of this Agreement

- a) In the event that any Party believes that there is *prima facie* evidence that there has been a failure by a Party to comply with any provision of this agreement, such Party will take the following actions:
- i) It will report full details of such suspected non-compliance to the IEM and CVO with copies to the Chief Executives of each of the Parties.
- ii) If any such non-compliance has been carried out, or assisted by an individual who is a member of a professional association, and such non-compliance may constitute a breach of any disciplinary code of such professional association, such Party may report such matter to the professional association.
- b) If such non-compliance may constitute a criminal offence, either in the country in which the Contract is being carried out, or in the home country of the organization



or individual which carried out or assisted such non-compliance, such Party may report such matter to the appropriate criminal authorities in those territories.

- c) In the event that any Party breaches any provision of this agreement, the other Parties may, in addition to the rights under this agreement, claim damages against the defaulting Party, and exercise any other rights they may have against the defaulting Party.
- d) The Parties will take appropriate disciplinary or enforcement action against any of their staff, consultants, parent and associated and subsidiary companies, agents, consortium and joint venture partners, sub-consultants and suppliers who cause or assist in any breach of any provision of this agreement.

Section 8 - Independent External Monitor/Monitors (IEM)

- a). The Principal, will appoint a competent and credible IEM/Number of IEMs for the duration of this agreement from the panel of IEMs appointed in consultation with the Central Vigilance Commission (CVC).
- b). The IEM will assess, on an independent and objective basis, the extent to which the Parties comply with their obligations under this agreement.
- c). The Parties will, after submission of a tender; after the award of any contract to them and for the duration of the contract:
 - i) Allow the IEM unrestricted access to all books, records and staff relevant to such tender;
 - ii) Ensure that the IEM has unrestricted access to the relevant books, records and staff of their consultants, parent and associated and subsidiary companies, agents, consortium and joint venture partners, sub-consultants and suppliers.
- d). In the event that the IEM believes that there is *prima facie* evidence that there is a violation of this agreement, the IEM will report the same to CEO of the Principal.
- e). Upon receipt of a report from the IEM, CEO of the Principal and the Board will discuss and try to agree upon the appropriate action to be taken in line with **sections 3,4 & 5 above** to deal with such violation.
- f). The IEM has no power to inquire any of the Parties to undertake any actions. No statement by the IEM, whether oral or in writing, is binding on any of the parties. Any Party in legal or dispute resolution proceedings can use all reports and other documentation issued by the IEM. The IEM can be called as a witness in legal or dispute resolution proceedings.
- g). Fee and /or any other incidentals including traveling/conveyance expenses, if any, payable to IEM shall be borne by the Principal.



- h). The IEM can only be removed from his appointment, if:
1. All parties agree in writing to remove him: or
 2. He resigns: or
 3. He is removed from his office by order of a Court having appropriate jurisdiction.
- i) On completion of the term by the IEM or if the IEM is removed from his appointment or in case of death of IEM (whichever is earlier), the Principal will appoint another IEM as per **section 8.a) above** for the remaining duration of this agreement.

Section 9 - Duration of Agreement

- a). This agreement comes into force as soon as it has been signed by all the Parties have signed it. It cannot be terminated or varied except by the written agreement of all the Parties.
- b). This agreement will expire after 12 months from the date of last payment under the respective Contract for the Consultant, and for all other Tenderers 6 months after the award of the Contract.

Section 10 - Other Provisions

- a). The Principal will disqualify from the tender process all Tenderers who do not sign this Pact or violate its provisions.
- b). Should any occasion arise entailing IEM to undertake any investigation under the provisions of this agreement, the venue for such investigation shall generally be at KIOCL Corporate Office, Kormangala, Bangalore –560 034.
- c). This agreement is subject to Indian law. Place of performance and jurisdiction is the corporate office of the Principal. In case of any dispute, the courts at Bangalore only shall have jurisdiction.
- d). Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
- e). Addresses along with other relevant details of the Chief Executives of the Parties are as given under;

1. Principal: Chairman-cum-Managing-Director, KIOCL Limited II Block, Koramangala, BANGALORE – 560 034 INDIA.	Tel : 080-25531322(O) : 080-25531272(O) Fax : 080-25521584(O)
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2. Tenderer / Consultant	Tel: Mobile: Email: Fax:
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- f). Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In that case the parties will strive to come to an agreement to their original intentions.
- g). If the consultant is a partnership or consortium, all partners or consortium members must sign this agreement.

For the Principal

For the Tenderer/ Consultant

Place.....

Place.....

Date

Date

Witness 1:

Witness 1:

(Name & address)

(Name & address)

Witness 2:

Witness 2:

(Name & address)

(Name & address)

The tenderer shall sign and seal with witness signature in the Integrity Pact Agreement format and shall submit along with the tender document.



18.0 ONLINE PRICE BIDDING CUM REVERSE E-AUCTION:

- a) As per current guidelines, KIOCL shall be conducting online price bidding cum Reverse e-Auction prior to opening of sealed price bids. The details in regard to online price bidding cum reverse auction are mentioned in the tender document.
- b) An agency nominated by who shall be authorized by KIOCL shall provide their services for carrying out the online price bidding cum reverse E-auction. The details in respect of the service provider are mentioned in the tender document.
- c) Prior to participation in online price bidding, bidders are requested to ensure that they have valid digital certificate well in advance so as to confirm participation before the online price bidding cum reverse auction.

18.1. BUSINESS RULE AND TERMS & CONDITIONS OF ONLINE PRICE BIDDING CUM REVERSE AUCTION

Note: All the tenders with the estimated value equal to and above the threshold value of Rs. 5 lakhs (Rupees five lakhs) are covered under e-reverse auction.

No., dated

Sub:

BUYER NAME	KIOCL LIMITED, (Formerly M/s. KUDREMUKH IRON ORE COMPANY LIMITED) DEPARTMENT, BANGALORE / MANGALORE.
AUCTION TO BE CONDUCTED BY	Service provider`s details are indicated in the tender documents. M/s. <u>Contact details:</u> 1. Name : Mobile No..... Email:..... 2. Name : Mobile No..... Email:.....



DATE OF AUCTION	Online Price Bid cum Reverse Auction Date: Dynamic Sealed Bid Time: Reverse Auction Time: (Auto extension as applicable)
DOCUMENTS ATTACHED	Business rule for Online price bidding cum reverse auction (Annexure-A) Terms & conditions of Online price bidding cum reverse auction Process Compliance Statement (Annexure-B) Price Confirmation (Annexure-C) Contact Information

Note :

The bidders are requested to note that they should have a valid digital Certificate issued by any of the valid certifying authorities to participate in the online bidding. Those vendors who are not in possession of a valid digital certificate are requested to apply for the same well in advance to avoid any last minute hassles. The bidders may contact the service provider if they are not in possession of a valid digital certificate.



ANNEXURE - A

BUSINESS RULES FOR ON LINE PRICE BIDDING CUM REVERSE AUCTION

A) General Terms and Conditions of Online Price Bidding cum Reverse Auction

1. Against this Enquiry for the subject item/system with detailed scope of works as per our specification, KIOCL Limited, hereinafter referred to as KIOCL, may resort to "ONLINE PRICE BIDDING CUM REVERSE AUCTION PROCEDURE".
2. For the proposed Online price bidding cum reverse auction, techno commercially acceptable bidders only shall be eligible to participate. Bidders are requested to ensure that they have valid digital certificate well in advance so as to confirm participation before the online price bidding cum reverse auction.
3. KIOCL will engage the services of a service provider who will provide all necessary training and assistance before commencement of on line price bidding on Internet. Service provider shall also explain to the bidders, all the rules related to the Online Price bidding cum Reverse Auction / Business Rules.
4. Business rules like event date, time, bid decrement, extensions, etc. also will be communicated through service provider.
5. Vendors have to fax / e-mail the compliance form in the prescribed (provided by service provider) before start of Online price bidding. Without this the vendor will not be eligible to participate in the event.
6. Online price bidding cum Reverse auction will be conducted on schedule date & time.
7. At the end of Online price bidding cum reverse auction event, the bidders who had participated in the event has to fax / e-mail the duly signed filled-in prescribed format in their company letter head as provided on case-to-case basis to KIOCL through service provider within 24 hours of auction without fail.

B) Business Rule for finalization of the Online Price Bidding cum Reverse Auction

KIOCL will make arrangement with an agency who shall be KIOCL's authorized service provider for carrying out the online price bidding cum reverse auction. The bidder shall go through the guidelines given below and submit your acceptance to the same along with your Commercial Bid.

1. Online price bidding cum reverse auction shall be conducted by KIOCL, on pre-specified date, while the vendors shall be quoting from their own offices/ place of their choice. Internet connectivity shall have to be ensured by vendors themselves. In extreme case of failure of Internet connectivity, (due to any reason whatsoever may be) it is the bidders' responsibility / decision to send fax communication immediately to the SERVICE PROVIDER furnishing the price the bidder wants to bid online with a request to the service provider to upload the faxed price on line so that the service provider will up load that price on line on behalf of the Bidder. It shall be noted clearly that the concerned bidder communicating this price to service provider has to solely ensure that the fax message is received by the service provider in a readable / legible form



and also the Bidder should simultaneously check up with service provider about the clear receipt of the price faxed. It shall also be clearly understood that the bidder shall be at liberty to send such fax communications of prices to be up loaded by the service provider only within the closure of Bid time and under no circumstance it shall be allowed beyond the closure of Bid time / reverse auction. It shall also be noted that the service provider should be given a reasonable required time by the bidders, to upload such prices online and if such required time is not available at the disposal of the Service provider at the time of receipt of the fax message from the bidders, the service provider will not be uploading the prices and either KIOCL or the service provider are not responsible for this unforeseen circumstances. In order to ward-off such contingent situation bidders are requested to make all the necessary arrangements/ alternatives whatever required so that they are able to circumvent such situation and still be able to participate in the online price bidding cum reverse auction successfully. Failure of power at the premises of vendors during the Online price bidding cum Reverse auction cannot be the cause for not participating in the Online bidding auction. On account of this, the time for the auction cannot be extended and neither KIOCL nor the SERVICE PROVIDER is responsible for such eventualities.

2. The detailed process for online price bidding cum reverse auction is explained below:

The online price bidding event will be conducted in three stages

STAGE -I: Online initial price bid

At scheduled time, the screen for On-line price bidding will be launched wherein the techno-commercially qualified bidders will be allowed to submit their offers through online.

During the Stage-I online initial price bidding, the bidders would be required to quote price only on the basis of price terms indicated in their sealed price bid submitted along with techno-commercial bid before.

STAGE –II: Start Bid Price

After the expiry of the time for submission of on-line initial price bids, the lowest Price will be frozen by the system as the Start Bid Price (SBP) for Stage – III on line bidding.

STAGE – III: Reverse Auction on Start Bid Price

a) In Stage III of the online competitive bidding, computer screen will display Start Bid Price and which shall be visible to the all vendors participated in the initial online price bid auction during the start of the reverse Auction. You will be required to start bidding after announcement of Start Bid Price and decrement amount. Also, please note that the start price of an item in online reverse auction is open to all the participated online bidders. Any bidder can start bidding, in the



online reverse auction, from the start price itself. If the start price is your own price, you still need to bid in the online reverse auction. Also, please note that the first online bid that comes in the system during the online reverse auction can be equal to the auction's start price, or lesser than the auction's start price by one decrement, or lesser than the auction's start price by multiples of decrement. The second online bid and onwards will have to be lesser than the L1 rate by one decrement value, or lesser than the L1 rate by multiples of the decrement value.

- b) **Those vendors who have participated in the Initial online Price Bid Auction, will only be eligible to participate in the subsequent English Reverse Auction.**
- c) Online Initial Price Bid will be for **30 minutes** and Online English Reverse (no ties) Auction shall be for a **period of one hour** with a 30 minutes time difference between Initial Price Bid and RA. If a bidder places a bid in the last 10 minutes of closing of the Reverse Auction and if that bid gets accepted, then the auction's duration shall get extended automatically for another 10 minutes, for the entire auction (i.e. for all the items in the auction), from the time that bid comes in. Please note that the auto-extension will take place only if a bid comes in those last 10 minutes and if that bid gets accepted. If the bid does not get accepted, the auto-extension will not take place even if that bid might have come in the last 10 minutes. In case, there is no bid in the last 10 minutes of closing of Reverse Auction, the auction shall get closed automatically without any extension. However, vendors are advised not to wait till the last minute or last few seconds to enter their bid during the auto-extension period to avoid complications related with internet connectivity, network problems, system crash down, power failure, etc.
- d) The bid decrement amount shall be specified by KIOCL before start of bidding. The bidder can bid lower than the start bid price in reverse auction by a bid decrement or multiple of Bid decrement.
- e) Bidder will be able to view the following on your screen along with the necessary fields in the English Reverse (no ties) {Reverse Auction}:
- a. Leading Bid in the Auction (only total price)
 - b. Bid Placed by you
 - c. Your Own Rank
 - d. Start Bid Price & Bid Decrement value.
- f) After the completion of English Reverse (no ties), the **Closing Price (CP)** shall be available.
- g) **At the end of the Reverse Auction, Service Provider will evaluate all the bids (final price) submitted and final price comparative statement will be forwarded to KIOCL for further processing.**



- h) The bidders who have participated in the event, shall be required to submit the final prices, quoted during the English Reverse (no ties) in **Annexure-C Format** after the completion of Auction to Service Provider / KIOCL duly signed and stamped as token of acceptance without any new condition other than those already agreed to before start of auction.
 - i) Bids once made by the bidders, cannot be cancelled / withdrawn.
 - j) During the Online English Reverse (No Ties) Auction, if no bid is received in the auction system/website within the specified time duration of the online price bidding cum reverse auction, then KIOCL, at its discretion, may scrap the online price bidding cum reverse auction process and open only sealed price bids of all technically and commercially acceptable bidders submitted earlier along with techno-commercial bids.
 - k) KIOCL shall be at liberty to cancel the reverse auction process / tender at any time, before ordering, without assigning any reason.
3. Other terms and conditions shall be as per techno-commercial offers and other correspondences till date.
 4. KIOCL shall not have any liability to bidders for any interruption or delay in access to the site irrespective of the cause.
 5. Bidders are required to submit their acceptance to the terms and conditions given above before participating in the reverse auction.
 6. Our Service provider shall explain all the Rules related to the Online Price Bidding cum Reverse Auction/ Business Rules Document to be adopted along with bid manual. You are required to give your compliance on it before start of bid process.
 7. At the end of the reverse auction, bidder has to provide a detail price break up for his lowest offer (if KIOCL insists the same) within 24 hours.

OTHER TERMS & CONDITIONS:

1. The Bidder shall not involve himself or any of his representatives in Price manipulation of any kind directly or indirectly by communicating with other parties / bidders.
2. The Bidder shall not divulge either his Bids or any other exclusive details of KIOCL to any other party.
3. KIOCL's decision on award of Contract shall be final and binding on all the Bidders.
4. The SERVICE PROVIDER shall not have any liability to Bidders for any interruption or delay in access to the site irrespective of the cause.



5. The SERVICE PROVIDER not responsible for any damages, including damages that result from, but are not limited to negligence.
6. The SERVICE PROVIDER will not be held responsible for consequential damages, including but not limited to systems problems, inability to use the system, loss of electronic information etc.

Change in Business Rules, Terms & Conditions of Reverse Auction :

- 1) KIOCL reserves the right to modify / withdraw any of the Business rules, Terms & conditions of online price bidding cum reverse Auction at any point of time.
- 2) Modifications of Business rules, Terms & conditions of Reverse Auction will be made available on website immediately.
- 3) Modifications made during the online price bidding and Reverse Auction event will be advised to participating Bidders immediately.



ANNEXURE - B

Process Compliance Form

(The bidders are required to print this on their company's letter head and sign, stamp before faxing)

To

M/s.

.....

.....

.....

(The SERVICE PROVIDER)

Sub: Agreement to the Process related Terms and Conditions for the Online price bidding cum Reverse Auction

Dear Sir,

This has reference to the Terms & Conditions for the Online Price bidding cum Reverse Auction mentioned in the Tender No., Name of the tender.
.....

This letter is to confirm that:

1. The undersigned is authorized representative of the company.
2. We have studied the Commercial Terms and the Business rules governing the Online price bidding cum Reverse Auction as mentioned in your letter and confirm our agreement to them.
3. We also confirm that we have a valid digital certificate which will be valid for the subject tender whenever we sign on the bid submission.
4. We also confirm that we have taken the training on the auction tool and have understood the functionality of the same thoroughly.
5. We also confirm that we will fax the price confirmation & break up of our quoted price as per Annexure III & the price bid format in the tender document.
6. We, hereby confirm that we will honour the Bids placed by us during the auction process.

With regards

Signature with company seal

Name –

Company / Organization –

Designation within Company / Organization –

Address of Company / Organization –



ANNEXURE - C

To

Date :

M/s.
.....
.....
.....

(The SERVICE PROVIDER)

Sub: Final price quoted during online price bidding cum reverse auction and price break up for (Name of the tender)

Ref: 1. Tender No.

2. e-Auction date.....

3. Our Offer No. dated.....

Dear Sir,

We confirm that we have quoted our Final Prices during the Reverse Auction conducted today and Final Price Break-up (a separate schedule of works-price format is enclosed) is as under:

Description	Total Lumpsum amount (Rs)
As per Schedule of jobs Note: The total lumpsum amount shall be exclusive of service tax and cess.	

(In words Rupees:)

Thanking you and looking forward to the valuable order from KIOCL.

Yours sincerely,

For _____

Signature and Name

Company Seal



CONTACT INFORMATION

<p>M/s. (The SERVICE PROVIDER)</p>	<p><u>Contact details:</u></p> <p>1. Name : Mobile No..... Email:.....</p> <p>2. Name : Mobile No..... Email:.....</p>
<p>KIOCL Limited, BANGALORE /MANGALORE Karnataka State</p>	<p>Sri/Mr..... Designation:..... Dept:..... Mobile No..... P&T: Fax : E-Mail :</p>